

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Justin Black,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 25, 2022

Court of Appeals Case No.
21A-CR-1703

Appeal from the Decatur Superior
Court

The Honorable Matthew D.
Bailey, Judge

Trial Court Cause No.
16D01-1407-FB-493

May, Judge.

- [1] Justin Black appeals the order, following revocation of his probation, that he serve the remaining 2,100 days of his six-year suspended sentence in the

Indiana Department of Correction. Black argues the trial court abused its discretion by overlooking mitigating factors when it imposed that sanction. We affirm.

Facts and Procedural History

[2] On January 8, 2015, Black was convicted of Class B felony burglary.¹ The trial court imposed an eight-year sentence, ordered Black to serve two years on in-home detention, and suspended six years to probation. Black began serving probation on March 9, 2020.

[3] As a condition of probation, Black was to obey all state laws. However, Black was charged on July 17, 2020, with Class A misdemeanor operating a vehicle while intoxicated,² Class C misdemeanor operating a vehicle with a controlled substance in the body,³ and Class A misdemeanor leaving the scene of an accident.⁴ Black also failed to report the incident resulting in those charges to his probation officer, as required by his conditions of probation, and he tested positive for alcohol and marijuana. Based thereon, on July 23, 2020, the State filed a petition to revoke Black's probation.

¹ Ind. Code § 35-43-2-1 (2014).

² Ind. Code § 9-30-5-2(a) (2020).

³ Ind. Code § 9-30-5-1(c) (2020).

⁴ Ind. Code § 9-26-1-1.1 (2020).

[4] On September 1, 2020, Black tested positive for oxycodone and marijuana, and consequently, on October 6, 2020, the State filed a supplemental petition to revoke Black's probation. On December 22, 2020, Black was charged with Level 5 felony domestic battery⁵ and Level 6 felony domestic battery,⁶ which prompted the State to file a second supplemental petition to revoke probation. On January 8, 2021, Black was charged with Class A misdemeanor resisting law enforcement,⁷ and as a result, the State filed a third supplemental petition to revoke probation. On March 5, 2021, Black was charged with Level 5 felony escape,⁸ Level 6 felony resisting law enforcement,⁹ and Class A misdemeanor invasion of privacy,¹⁰ which prompted the State file a fourth supplemental petition to revoke Black's probation on March 8, 2021.

[5] On June 2, 2021, the trial court held a hearing on the State's petitions to revoke and found Black violated the conditions of his probation by committing new offenses and technical violations. On July 8, 2021, the court revoked Black's probation and ordered him to serve the remaining 2,100 days of his sentence as an executed sentence at the Indiana Department of Correction (DOC).

⁵ Ind. Code § 35-42-2-1.3(c)(2) (2020).

⁶ Ind. Code § 35-42-2-1.3(b)(2) (2020).

⁷ Ind. Code § 35-44.1-3-1 (2021).

⁸ Ind. Code § 35-44.1-3-4(a) (2021).

⁹ Ind. Code § 35-44.1-3-1(c)(1)(A) (2021).

¹⁰ Ind. Code § 35-46-1-15.1(a)(11) (2021).

Discussion and Decision

- [6] Probation is a favor granted by the trial court, not a right to which a criminal defendant is entitled. *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*. A court may order execution of all or part of the sentence that was suspended at the time of the initial sentencing if the court finds the person has violated a condition of probation at any time before termination of that probationary period. Ind. Code § 35-38-2-3(h). The conditions for probation, and the decision whether to revoke probation when those conditions are violated, are left to the discretion of the trial court. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013).
- [7] We review probation violation determinations and the sanctions imposed therefor for an abuse of discretion. *Id.* An abuse of discretion occurs if the decision is “clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006) (quoting *In re L.J.M.*, 473 N.E.2d 637, 640 (Ind. Ct. App. 1985)). “We will second-guess the fact-finding court only when it responds to that factual context in an unreasonable manner.” *Tapia v. State*, 753 N.E.2d 581, 585 (Ind. 2001).
- [8] Black asserts the trial court abused its discretion by ordering him to serve his sentence in the DOC, and Black asks that we remand for the trial court to impose a community-based placement because of the hardship his incarceration places on his children, his medical condition, and substance abuse treatment.

Because this was a probation revocation, not a sentencing hearing, the trial court was not required to enter any findings regarding aggravators and mitigators or to balance aggravating and mitigating circumstances.¹¹ *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*. Instead, proof of a single violation is sufficient to permit the trial court to revoke probation. *Beeler v. State*, 959 N.E.2d 828, 830 (Ind. Ct. App. 2011), *trans. denied*. Black violated the conditions of his probation by committing multiple criminal offenses. In addition to the crimes Black was convicted of while on probation, he was charged with several other criminal offenses, some of which are still pending. This is indicative of the risk that Black will commit other crimes and reflects poorly on his character. Black took advantage of the court's leniency in granting probation, and Black proved he has a disregard for the law and the restrictions placed on him in community placement. Thus, we cannot say the trial court's decision was an abuse of discretion. *See Castillo v. State*, 67 N.E.3d 661, 665 (Ind. Ct. App. 2017) (holding no abuse of discretion in ordering

¹¹ Nevertheless, we note the trial court did not overlook Black's proposed mitigators, but rather, did not find them "significant." (Appellant's App. at 200, 201.) Black argues his incarceration will cause an extreme hardship on his eight children and deprive them of financial and familial support, but Black testified he does not pay child support for any of his children and only recently gained joint custody of some of his children. "Many persons convicted of serious crimes have one or more children and, absent special circumstances, trial courts are not required to find that imprisonment will result in undue hardship." *Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999). Black also argues revoking his probation will hinder him from seeking substance abuse treatment and from monitoring his physical health. However, Black also testified he had never sought treatment for his substance abuse. Nor did Black provide any evidence that his physical health cannot be monitored and treated at the DOC.

defendant to serve his previously suspended sentence because of his blatant disregard for the terms of his probation).

Conclusion

[9] The trial court did not abuse its discretion when it revoked Black's suspended sentence and ordered him to serve the remaining 2,100 days of his sentence as an executed sentence at the DOC. Accordingly, we affirm.

[10] Brown, J., and Pyle, J., concur.